

The Lockean Basis of Iroquoian Land Ownership

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John Bishop

I. INTRODUCTION¹

John Locke's theory of property was carefully designed to render claims to land ownership by North American Native people illegitimate; as a result of this agenda, his theory is Eurocentric, gender biased, and blind to many aspects of Native culture. Locke's involvement in the colony of Virginia gave him a vested interest in showing that land in North America was unowned at the time of contact, and he provided the basis for a discourse on property that many European settlers for generations were eager to believe.² The case for this view has most forcibly been made in recent articles by James Tully³, who intends to cast doubt on the applicability of Lockean property theories to Native land ownership. If Tully's views become generally accepted, and it seems likely some version of them will be,⁴ defenders of Native ownership claims will have a basis for rejecting Lockean style property theories altogether, or at least for rejecting their applicability to Native land. Tully, for example, argues for recognition of dual Native and English common law property discourse, neither of which is Lockean. Not that the rejection of Lockean discourse is new; there has been a long history of rejecting its application to North America. Even in Locke's day, alternative views of property were proposed for Europeans settling in North America. In the nineteenth century,

Chief Justice Marshall explicitly rejected Lockean foundations for property claims in *Johnson and Graham's Lessee v. M'Intosh* (1823).⁵

This paper will examine an alternative to rejecting the application of Lockean property theory to Native lands at the time of contact. It will be argued here that if the Lockean approach to property is corrected for Eurocentric and gender bias, and for blindness to Native cultures, then Native ownership of both agricultural and hunting lands at the time of contact has a firm Lockean basis.

As a test case for showing that Lockean property theory supports Native ownership, this paper will discuss Iroquoian land usage.⁶ The mixture of hunting and farming that formed the basis of the Iroquoian economy at the time European settlers began questioning Iroquoian land ownership makes this a useful example. However, this paper is not intended as a contribution to the study of the Iroquoian system of land ownership; it is an attempt to identify biases and theoretical problems in Lockean property theory by trying to apply that theory to a non-European culture and economy. Showing that Iroquoian land ownership has a Lockean basis is not to say that Iroquoian property rights are best analyzed in Lockean terms; it only shows that Lockean theory has failed in denying Iroquoian ownership of the land they farmed and hunted on.

John D. Bishop, Administrative Studies, Trent University

The removal of biases from Lockean property theory and the application of the theory to Iroquoian land usages are part of a larger discussion concerning both the interpretation of Locke's writings and the coherence of Lockean style property theories. Some of the key issues in that larger debate which are crucial to our current concerns can be correlated with discussion of specific aspects of Iroquoian culture and economy; the following lists these and the section in which they will be discussed:

<i>Issue of Lockean Interpretation or Coherence</i>	<i>Iroquoian Culture or Economy</i>
III group ownership	• farming methods
IV enclosure	• governing structures
V nature of improvement	• temporary clearing of farm land
VI nature of labour	• care of hunting grounds
VII Lockean proviso	• cultural significance of hunting

However, before dealing with these specific issues, this paper will first outline very briefly Locke's theory of property and his view of North American Native People.

II. LOCKE'S THEORY OF PROPERTY

In the beginning, God gave all of nature to humankind in common (II, 25); all people had an equal right to gather natural resources for their own use. Once gathered (or "appropriated"; II, 26), an item belonged to the person who made the effort to gather it, but nature itself remained common property. One owned the apples one picked (II, 28), but not the apple tree; the deer one hunted (II, 30), but not the forest. Ownership was conferred by the effort expended to make an item available for personal use; an object became personal property when someone "hath mixed his labour with" it (II, 27). Once acquired, owners of objects were entitled to dispose of them in any fashion they chose except letting them spoil unused.

When applied to land, the theory holds that all land was originally owned in common, but that anyone who chose could acquire a rightful property claim to a specific piece of land by labouring to make it more productive. One could, and this example is appropriate for the

woodlands of North America, clear the forest, plough the soil, and cultivate crops.⁷ This would entitle a person to own not only the crops but also the land that had been cleared.

The portion of the Lockean theory outlined so far refers to the original appropriation of property—that is, how a piece of land goes from being part of the common property of all people to being the private property of a particular individual. Once a piece of land is private property, the owner, while alive, can choose to transfer ownership to any other person and, upon dying, can designate anyone as heir (subject to the owner's moral responsibility to dependents).

This theory of appropriation has an implied limit in that a person is not entitled to acquire more land that they can productively cultivate. Locke also places two constraints on appropriation of land.⁸ First, a person cannot claim so much land that it produces more than the owner can consume before the produce goes bad. The other constraint is the famous Lockean proviso; a person is only entitled to transfer property from common to private ownership if "enough and as good is left for others." The interpretation of this proviso is much discussed,⁹ and later in this paper it will be discussed with reference to the settlers on Iroquoian territory. Locke argues that the development of money removes these constraints on the amount of property a person can own; once money provides a means of stored value, ownership of property can be unlimited.¹⁰

Interpreters of Locke have argued variously for labour, merit, efficiency, and desert as the basis of Locke's theory of original appropriation.¹¹ However, underlying any or all of these is Locke's theory of natural rights and natural law. In a state of nature, people can be aware of and are morally bound by the Law of Nature. Ashcraft usefully distinguishes natural law as the moral foundation of Locke's theory from empirical claims which Locke uses to apply natural law to specific historical situations, like seventeenth century North America.¹² In these terms, what the present paper will do is return to the natural law foundations of original appropriation and reassess the application of this to North America using recent empirical information unavailable to Locke.¹³

The Law of Nature, among other things, imposes on all people a duty to undertake actions which tend to preserve the human spe-

cies.¹⁴ Because certain forms of labour increase the likelihood of preservation, we have a duty to perform those kinds of labour. Since original appropriation of property encourages and makes possible those kinds of labour, original appropriation of private property becomes a right.¹⁵ This is related to efficiency in that more efficient use of land also tends towards human preservation. However, Locke nowhere argues that efficiency overrides private property once ownership is established; his theory is obviously not a utilitarian theory in which land must always be reassigned to the most efficient use. Thus efficiency is only relevant at the time of original appropriation and only in so far as it helps Locke derive property rights from natural law. The duty to preserve humanity is the primary aspect of natural law used in the current paper.

In the chapter on property it is clear that Locke thought most of America was still owned in common by mankind (II, 26) — meaning all of mankind, not just Native Americans. He also seemed to think that most of America was vacant (II, 36). Native Americans wandered wherever they wanted in a vast, empty continent; Locke seemed quite concerned that they might get lost (II, 36). He did not seem to think that they had identifiable territories, cultivated farm land, or assigned hunting grounds. Economically, they hunted and gathered; nowhere does Locke acknowledge agriculture outside the civilizations of Meso and South America.

Trade, according to Locke, was in the form of barter and was limited because Native Americans had no money (II, 49). For the most part, they had not entered civil society because they had no regular government (II, 108).¹⁶ He repeatedly refers to the natives of North America as an example of people living either in a state of nature or under the “youngest” forms of civil society (II, 49; II, 108).¹⁷ When necessary, decisions would be made by “the people” or their representatives in a council. Locke’s image is of free and independent individuals living in the state of nature coming together to make decisions with no individual claiming power or authority over any other.¹⁸ Only when fighting a war would they elect as temporary commander the bravest or strongest man present.

How accurate is this picture as applied to the Iroquoian of the seventeenth and eighteenth centuries? Not very.¹⁹ The issue of mostly vacant land held in common will be discussed later in this paper. The Iroquoian economy was based on

agriculture, with hunting and gathering important supplements to the three cultivated staples — corn (i.e., maize), squash, and beans. Money of various sorts played some role in the economy, more as a medium of exchange than as stored value; Locke was right in thinking that the Iroquoian did not have an insatiable desire to acquire endless amounts of gold or to accumulate unlimited possessions of any sort.²⁰ The Iroquoian did have extensive trade connections throughout North America before the European arrival. And long before attempts were made to settle the lands, the fur trade with the French, Dutch, and British had become a significant part of the Iroquoian economy.

On government, Locke was completely wrong. The Iroquois had formed the Five (later Six) Nation Confederacy as a sophisticated, complex, and well-defined system of governance, and the Huron were a confederacy of four peoples.²¹ The Iroquois confederacy had been formed in the fifteenth century (prior to Columbus); it was functioning throughout Locke’s lifetime and throughout the eighteenth century when settlers were moving onto Iroquoian lands. However, Iroquoian government had neither the sort of authority to enact laws nor the executive power and control that European governments were used to.²²

III. GROUP OWNERSHIP

Locke always assumed that land would be appropriated and owned by individuals. Prior to the formation of government by social contract, a piece of land was either commons available for individual appropriation, or it was the property of an individual who had invested labour in improving it. After the formation of government, there could be agreement to leave some land unappropriated; such “commons” would belong to the community in the English fashion, but such community ownership was only possible subsequent to the formation of government, and would be exceptional even then because the purpose of forming government was the protection of private property. Individuals would own most of the land.

For the Iroquoian, land was not the property of individuals; both agricultural land and hunting grounds were assigned to clan segments, villages, or bands. This group ownership could not be by community agreement after the fashion of English commons since Locke

viewed Native People as being in a stage prior to the formation of government. Furthermore, government could not be formed in a community in which all productive land was group owned since governments are formed by agreement of individuals for the protection of their individual property; if there was no individual property, government would not be formed to protect ownership. A Lockean justification of Iroquoian group ownership cannot, therefore, be based on social contract and the formation of government.

If a Lockean basis of group ownership is possible, it must be derived directly from natural law. Interpretations of Locke's views on natural law vary, but Tully²³ agrees with Simmons and others in thinking that natural law for Locke included a natural liberty of the individual bounded by a natural duty to preserve mankind and by certain natural obligations. Group ownership of land puts limits on natural liberty because it makes use of the land contingent on the agreement of the other members of the group, and on social obligations to share labour and produce. This appears to conflict with the whole point to Locke's argument on property, namely, that owning property does not depend on getting anyone's agreement, and does not involve obligations to society. To justify the limits on natural liberty that group ownership involves, what one needs to show is that the survival of the group imposed natural obligations to share work and produce among the community.

Locke acknowledged that wives and children have a claim in natural law on a man's property, which takes precedence over, for example, the claims of a victim of aggression against an aggressor's property, or the claims of a conqueror in war.²⁴ The claims of the wife and children are based on the belief that recognition of such claims advances the survival prospects of humanity. The extension of such claims from immediate family to the extended family or community would depend on showing that given a particular culture, technology, and situation, the survival prospects of the group were enhanced by group ownership.

Given the immense labour involved in clearing forests with fire and stone axes, and given the need for cooperation in hunting, it is not unreasonable to claim that shared labour and group ownership of land enhanced Iroquoian survival. If so, then group ownership has a clear Lockean basis in natural law.

IV. ENCLOSURE

Locke explicitly claims that land in North America was not enclosed, and connects this with his claim that such land was still common property. For example, he talks of "... the wild Indian, who knows no enclosure, and is still a tenant in common ..." (II, 26). It is certainly true that Iroquoian hunting grounds were not physically enclosed, and Iroquoian agricultural land was not enclosed in the cow and sheep proof fences and hedges common in England. This physical difference may have contributed to Locke's and other Europeans' failure to perceive Native land ownership systems.²⁵ However, Locke's own argument shows that such physical enclosure is not necessary to justify ownership; legal "enclosure" is sufficient once government has been established. Locke claims that laws are the "fences to properties of all members of the society" (II, 222), and elsewhere says that "the people hav[e] reserved to themselves the choice of their representatives as the fence to their properties ..." (II, 108).

However, laws can only be fences once government is established, and Locke quite clearly saw North America as being still in a state of nature (II, 49). In a state of nature land can be private property, but it is not fenced by laws and government since these do not exist.²⁶ Without government, the Iroquoian could not claim enclosure by laws, and so without physical enclosure there could be no ownership.

But Locke's Eurocentric biases has lead him to an error here; legal enclosure does not require a government capable of legislating and enforcing property rights; all that is required is a method of recognising property claims and resolving disputes. This the Iroquoian had for both hunting and agricultural land. Hunting grounds and agricultural land were assigned to particular clan segments or families. These assignments lasted over many generations and hence became part of tradition.²⁷ Boundary and trespass disputes, if minor, were handled by local chiefs. Disputes between different nations of the Iroquois Confederacy would be settled through council meetings called and supervised by the Onondaga chiefs. Locke was probably right in suggesting Native leaders had only limited power to make laws concerning land ownership and limited powers of enforcement. But these are not needed to prove Lockean ownership; only a system of recognising land ownership is neces-

sary for enclosure in a state of nature. Locke's image of North American Native People running "wild" (II, 26) in a huge forest without boundaries reflects only his failure to perceive non-physical enclosure.

It can be concluded that Iroquoian land, whether used for agricultural or hunting, was "enclosed" in the required sense that ownership was recognised by defined social structures.

V. NATURE OF LAND IMPROVEMENT

One of the most powerful Lockean arguments against Native ownership of land is the claim that land appropriation depends on the labour of clearing and cultivating, and that since Native peoples had not laboured on the land, the land could be appropriated by settlers willing to do so. This argument is powerful, but not correct. Its application to Iroquoian agricultural lands and hunting grounds needs to be discussed separately.

The failure of Locke and other Europeans to perceive the extent of Native agriculture was probably partly due to the Lockean argument that agriculture usually implied ownership; the easiest way to deny ownership was to deny the facts. In the case of the Iroquoian, the application of Lockean property theory to agricultural land is complicated by the fact that improvement was not permanent. Because of the lack of manure, land was cleared, farmed for ten to thirty years, and then not used for agriculture.²⁸ It needs to be shown that labour leading to non-permanent improvement confers ownership.

On Locke's theory it does. For Locke, labour is relevant only to the initial appropriation of land from the commons, not to its continued ownership. Locke assumed that improvements would be permanent or maintained, but there is nothing in his theory of appropriation that requires this. To require continual labour or improvement would radically change the theory to a utilitarian one in which continued ownership would depend on continued assessment of its productivity. This would undermine Locke's entire attempt to establish property rights, and replace it with an argument for the utility of property.²⁹ Once the Iroquoian cleared land, Locke would have to recognise that it had been appropriated. Ceasing to farm it subsequently is irrelevant to continued ownership.³⁰

VI. HUNTING GROUNDS

The Lockean argument against Iroquoian ownership of hunting grounds was that the Iroquoians had not invested labour in clearing the land and subduing nature; since their labour had only been directed towards hunting animals not improving the land, they owned the animals they killed, but not the land they hunted on. Their hunting grounds were therefore still the common property of all mankind, and could be appropriated by anyone willing to labour at clearing a portion of them. It has been pointed out that this argument will always justify farmers appropriating the land of hunters,³¹ But I will argue that this Eurocentric bias in favour of farming is not inherent in Locke's argument and that hunters can claim a Lockean basis for owning their hunting grounds.

A Lockean based claim for ownership of hunting grounds rests on three factors: socially recognised assignment of hunting territories, care of hunting territories by restraint, and hunting's contribution to the survival of the community.

For the Iroquoian at the time of contact, hunting territories were associated with particular clans and assigned to families within the clan by tradition. Within the Five (later Six) Nation Confederacy and their client bands, there were recognised procedures for resolving disputes. This social recognition of the assignment of specific hunting grounds to identifiable people or groups is sufficient to establish "enclosure" for purposes of a Lockean argument; physical enclosure is irrelevant, and in this case incompatible with usage since the animals needed to wander. As argued above, group ownership of such "enclosed" hunting grounds by families, clans or bands is as relevant to Lockean arguments as individual ownership.

Within assigned territories, families would hunt certain species in certain areas some years and times of years. Other years and times of years, they would refrain from hunting. The purpose of these hunting patterns was conservation.³² The patterns were set by a combination of tradition and close observation of the fluctuations of animal numbers and their migration patterns. Decisions were based on the principles of respect for tradition and respect for nature and living things. Religion instilled a belief in the sanctity of people living in spiritual harmony with the rest of nature,³³ but the economics of family survival lay behind caring for hunted

species by sometimes refraining from hunting at certain times and places. Later, when the English and French fur traders started to provide the Iroquoian with access to insatiable European markets and to European made goods, the ethic of care was sorely stressed, but there clearly had been some care by restraint at the time of contact.

Such restraint satisfies Locke's argument in the same way labouring to improve the land does. For Locke, investing labour in improving common land conveys private ownership of the land because of a combination of two factors; first, such labour improves productivity and hence people's chances of survival, and second, it would not be undertaken unless private ownership of the resulting benefits, which requires private ownership of the land, is assured. Care by restraint fulfils both these requirements every bit as well as land improvement; restraint would not be undertaken unless those who restrained their hunting reaped the benefit, and given the technical level of Iroquoian society, restraint that prevented over-hunting of particular species in particular areas at certain times would increase the chances of human survival.

Thus if one returns to the natural law obligation to provide for the survival of the community, restraint can justify ownership of hunting grounds in precisely the same way that labour justifies ownership of farm land. The extent to which this changes the labour theory of appropriation needs to be noted. If this conclusion is correct, labour does not allow appropriation because the activity somehow "mixes" something of the labourer with the land, but because labour in some situations is required by natural law. Natural law, in other situations may require other types of behaviour, such as restraint. Any behaviour required by natural law confers property rights in a fashion similar to labour if the property rights permit or encourage the behaviour required.

This conclusion is actually more restricted than some current interpretations of the requirements of Lockean arguments. Simmons argues at length that ownership does not require labour, but that "property can be acquired by incorporation into our purposive activities."³⁴ The conclusion of the present paper is restricted to activities required by natural law. When discussing Simmons' view of purposive activity, Tully points out the implication which is argued for in the present paper that North American Native

People owned North America at the time of contact.³⁵ Tully thinks this shows purposive activity is not a correct interpretation of Locke's intention, but we are here trying to show that Locke's intention of dismissing Native ownership of hunting grounds was inconsistent.

VI. THE PROVISIO

The previous section argues that there are Lockean grounds for recognising Native ownership of hunting grounds; this section, on the contrary, assumes that the hunting grounds were the common property of humanity and argues that even on that assumption, appropriation of hunting grounds by European settlers does not have a Lockean justification.

As mentioned above, Locke placed two constraints on the right to the appropriation of common land; a person could not justifiably appropriating land that would produce more than they and their family could consume before it spoiled, and the appropriation had to leave "enough and as good" for others. The second of these is the famous Lockean proviso. There have been many interpretations of the Lockean proviso;³⁶ the two that need to be examined in the current context are: (a) that the Iroquoian were left as well off as they were before the settlement; or (b) that there was suitable land left for the Iroquoian to settle on and farm in the same way as European settlers.

If the first of these interpretations is assigned to the proviso, then the proviso was clearly violated by the settlement of Iroquoian hunting grounds. That the Iroquoian hunters were less well off after settlement is clear from their bitter complaints throughout the eighteenth and nineteenth centuries that settlers were interfering with hunting.³⁷ The effect of settlement on hunting is clearer when it is realized that any particular settlement would be in the hunting territory of a particular clan or community, and thus the burden would fall not imperceptibly on the Iroquoian people as a whole, but very perceptibly on specific groups of individuals.

The other interpretation of the phrase "enough and as good" would imply that there was as much land left for each Iroquoian as each settler had acquired, and that the Iroquoian portion could be made as productive as the settlers' lands. In other words, there was enough land left to allow the Iroquoian to give up hunting and become European-style farmers.

Accepting this argument implies that farmers everywhere have a natural right to force hunters to become farmers since the farmers are entitled to settle on hunting grounds until the hunters have only enough land left to live if they adopt farming.³⁸ A couple of things need to be said about this version of the proviso. First, if the settlers are within their rights to enforce their right of settlement, this version of the theory of original appropriation collapses into a right of conquest whenever the hunters object to giving up their hunting grounds. And the Iroquoian plainly did object.

Locke was keen to establish that original appropriation does not require the permission of the rest of humanity, and in the event of interference in "justified" appropriation he thought a state of war would be justified.³⁹ However, he did not view his theory of original appropriation as a justification of war, and did not give serious thought to the possibility that as a matter of fact that might be the normal result.⁴⁰ Locke repeatedly uses phrases such as "there could be little room for quarrels or contentions ..." (II, 31); there was not "any prejudice to any other man ..." (II, 33); or the "rest of mankind" would have no "reason to complain or think themselves injured" (II, 36). The problem with this second interpretation of the proviso is that hunters clearly did see themselves as injured, and saw themselves as thinking they had good grounds for thinking so. It was empirically not true that there was "no room for quarrel" (II, 38).

Second, this interpretation of the proviso does not deal with the historic fact that North American Native People (such as the Cherokee⁴¹) who cleared land for European style farming simply made the land more attractive to Europeans and lost it anyway. And it must be remembered that the argument applies only to Iroquoian hunting grounds, not to the land they used for agriculture.⁴² The impact of this second interpretation of the proviso is that no value at all is placed on lifestyles that use the commons as commons, even if those lifestyles (having avoided the tragedy of the commons somehow) have existed for centuries.⁴³ But it seems that this is the only interpretation of original appropriation and the proviso which can justify the right of settlement on Iroquoian hunting grounds. The justice of this interpretation in the context of aboriginal rights has been explored elsewhere.⁴⁴

VII. CONCLUSION

John Locke's theory of original appropriation of land was intended to show that North America in the seventeenth century was unowned, and that Europeans had a right to appropriate land in America by clearing and farming it. This theory of appropriation was based on natural law and certain beliefs about Native American cultures. But Locke was led into inconsistencies by his biases; consistent Lockean arguments from natural law in fact show that North American Native People had already appropriated both farm land and hunting grounds, and hence that most (or all) of North America was private property at the time of contact. Given the culture, technology and situation of North American Native peoples, Lockean arguments based on natural law show that group ownership of property is as legitimate as individual ownership, that physical enclosure of private property is not required even prior to the formation of governments, that temporary land improvement is sufficient to legitimise appropriation, and that care by restraint is as adequate for appropriation as labour for improvement. It can be further shown that even if Native hunting grounds were still common property, the Lockean proviso would make appropriation by settlers illegitimate anyway. Locke failed in his attempt to deny Native ownership of land at the time of contact.

NOTES

1. For a much longer version of this article, which expands on the philosophical issues of Lockean property theory, see: "Locke's Theory of Original Appropriation and the Right of Settlement on Iroquois Territory," *Canadian Journal of Philosophy*, Sept. 1997.
2. Lockean discourse was not the only discourse about property; much of the debate between European and Native property claims depends on other theories of rights and property such as treaty rights, aboriginal rights, or the right of conquest; this paper deals only with the Lockean theory of property.
3. James Tully, 'Rediscovering America: The Two Treatises and Aboriginal Rights,' in G. A. J. Rogers, ed., *Locke's Philosophy: Content and Context* (Oxford: Clarendon Press 1994); James Tully, 'Aboriginal Property and Western Theory: Rediscovery of a Middle Ground,' in Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul, *Property Rights* (Cambridge: Cambridge University Press 1994); James Tully, 'Property, Self-Government

- and Consent,' *Canadian Journal of Political Science*, 28 (1995).
4. Richard Tuck, 'Three Great Empires — and Their Defenders: the Diverse Conquerors of the Americas,' *Times Literary Supplement*, No. 4860 (1996) 15.
 5. Tully, 'Aboriginal Property and Western Thought,' 158.
 6. I will follow Trigger's usage in which 'Iroquoian' refers to the Hurons, the peoples of the Five (later Six) Nation Confederacy, and other peoples speaking languages of the same group. 'Iroquois' will refer only to the peoples of the Five (or Six) Nation Confederacy. Trigger points out that the Iroquois and Hurons, despite their on-going warfare with each other, had similar economies in the immediate pre-contact period (12). I am not aware of any differences in their economies which affect the arguments of this paper. See Bruce Trigger, *The Huron: Farmers of the North* (Fort Worth: Holt, Rinehart and Winston 1990).
 7. That Locke had precisely this in mind is argued by Arneil, 602–603; and by James Tully, 'Aboriginal Property and Western Theory,' 160. Locke's phrase is "tills, plants, improves, cultivates ..." (II, 32).
 8. Tully refers to these as the internal or spoilage limit, and the external or sufficiency limit; James Tully, 'Property, Self-Government and Consent,' 120.
 9. See for example; Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books 1974); and Jan Narveson, "Property Rights: Original Acquisition and Lockean Provisos" (Unpublished manuscript, University of Waterloo 1995).
 10. For a discussion of how Locke applies the constraints only to original acquisition, see Macpherson 203–20. Shrader-Frechette argues against Macpherson and others on this point (206–19); I will take the view that Natural Law continues to apply after original acquisition, but that the specific constraints do not apply unless they are entailed by Natural Law in particular situations, which they are generally not for Locke in commercial society. This position may be consistent with Shrader-Frechette's discussion. See C.B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press 1962); and Kristin Shrader-Frechette, 'Locke and the Limits on Land Ownership,' *Journal of the History of Ideas*, (1993).
 11. cf. Shrader-Frechette, 201–19.
 12. Richard Ashcraft, *Locke's Two Treatises of Government* (London: Unwin Hyman 1987), ch. 2, esp. 50–56.
 13. Locke had in fact read extensively the writings about North American Native People that were available in his day; cf. Tully, 'Rediscovering America,' 168. He obviously considered empirical information relevant.
 14. Tully, 'Property, Self-Government and Consent,' 107; also Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996) 55.
 15. For a discussion of the debate surrounding this interpretation of Locke, see Tully, 'Property, Self-Government and Consent,' 113–18.
 16. Also Tully, 'Rediscovering America,' 169. In 'Aboriginal Property and Western Theory' 164, Tully argues that Locke gave three reasons for not recognising that Native Americans had government. These are: the war chief could not "declare war or peace," "the councils often appointed *ad hoc* arbitrators of justice," and there was a "lack of crime, property disputes, and litigation."
 17. See also Tully, 'Rediscovering America,' 169.
 18. *ibid.*
 19. Tully discusses the inaccuracy of Locke's views of the property and government systems of Native Americans, including the Iroquois, in 'Aboriginal Property and Western Theory,' 163.
 20. Trigger, 48, 95.
 21. Trigger, ch. 6.
 22. Jennifer Roback, 'Exchange, Sovereignty, and Indian-Anglo Relations,' in Terry Anderson, ed., *Property Rights and Indian Economics* (Lanham, MD: Rowan and Littlefield 1992) 13–16; Bruce Benson, 'Customary Indian Law: Two Case Studies' in Anderson, ed., *Property Rights and Indian Economics* 28; Trigger, 80–96.
 23. Tully, 'Property, Self-Government and Consent,' 108.
 24. The gender bias in this paragraph is Locke's.
 25. cf. for example, Flanagan's discussion (591–92) of John Winthrop's "General Considerations for the Plantation in New-England," (1629). It is clear from the quotation Flanagan gives that for Winthrop, it was the lack of physical enclosure (and the lack of "manurance") that meant Indian lands were unowned and available for settlement. Thomas Flanagan, "The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy." *Canadian Journal of Political Science*. Vol. 22, 3, (1989) 589–602.
 26. Tully, 'Rediscovering America,' 169.
 27. Tully, 181; also William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983) 58–67, for a discussion of how land assignment varied with use. Tully's and Cronon's discussions are in terms of North-eastern Native peoples in general, as are most discussions of hunting grounds. There appear to be only limited studies of the Iroquoian assignment of hunting grounds, but see Trigger, 34–39.
 28. Trigger, 30–32.
 29. For a discussion of the differences between rights and utility theories of property, and arguments

- showing Locke's is a rights theory, see Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press 1988), especially 5–19.
30. On actual abandonment of property, see Simmons, 'Historical Rights and Fair Shares,' 171.
 31. Tuck, 15.
 32. The extent to which the Iroquoians and other Native peoples practised care of hunting grounds by restraint is greatly debated; see Claudia Notzke, *Aboriginal Peoples and Natural Resources in Canada* (Toronto: Captus, 1994) 145–149 for recent comments on and references to this debate. For purposes of my argument, the extent of care is irrelevant; any level of care would satisfy Locke's argument. Also, the collapse of the care ethic under pressure of the fur trade with Europeans (as is discussed by Notzke, 147) is also irrelevant, since this would have been subsequent to the original appropriation of the hunting grounds.
 33. Tully, 'Rediscovering America,' 190.
 34. Simmons, 'Historical Rights and Fair Shares,' 183; also 162.
 35. Tully, 'Aboriginal Property and Western Thought,' 116–17.
 36. For a survey of interpretations of the proviso, see Narveson, 'Property Rights.'
 37. Williams, 235.
 38. Besides scholarship on Locke such as Tully's, this question has provoked philosophical debate; cf. Michael McDonald, 'Aboriginal Rights,' in William Shea and J. King-Farlow, *Contemporary Issues in Political Philosophy* (New York: Science History Publications, 1976); David Gauthier, untitled review of William Shea and J. King Fallow, *Contemporary Issues in Political Philosophy, Dialogue*, Vol. 18, (1979) 432–40; Nichola Griffin, 'Aboriginal Rights: Gauthier's Arguments for Despoliation,' *Dialogue*, Vol. 20 (1981) 690–96; Thomas Flanagan, 'The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy,' *Canadian Journal of Political Science*, Vol. 22, 3 (1989) 589–602; Nichola Griffin, 'Reply to Professor Flanagan,' *Canadian Journal of Political Science*, Vol. 22, 3 (1989) 603–606; and Thomas Flanagan, 'Reply to Professor Griffin,' *Canadian Journal of Political Science*, Vol. 22, 3 (1989) 607. The discussion in the current paper is more restricted, dealing only with the issue in the context of Locke's theory. If these papers are debating about a Lockean type proviso (and it is not clear that this is the context of all of the debate) then they presuppose that Indian hunting grounds are common property and can be appropriated subject to the proviso. It might be more appropriate, as Griffin points out ('Reply to Professor Flanagan,' 604), to view this debate as about expropriation.
 39. Tully, 'Rediscovering America,' 170–71.
 40. See Ashcraft, ch. 8, for Locke's views on a state of war (which was not the same as the state of nature as it was for Hobbes); see Williams, ch. 5, 6, and 7, for the history of the idea that Europeans had a right to wage war against Natives if the Natives in the slightest way interfered with settlement.
 41. Ronald Wright, *Stolen Continents: The "New World" through Indian Eyes* (Toronto: Penguin 1993) ch. 9; also Flanagan, 601.
 42. It is now recognised that the extent of Native agriculture was far greater at the time of European contact than was realised at the time. The discourse of the right of settlement may explain why Europeans, including Locke who no where acknowledges Native agriculture in North America, did not see this.
 43. As Tully expresses a somewhat similar conclusion: "This is the flaw in almost all the purported solutions to appropriation without consent: they presuppose agreement on the values and goods of the commercial system," ('Property, Self-Government and Consent,' 127).
 44. See footnote 38 above.